IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1453 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT WATER SUPPLY &SEWERAGE

Versus

BAHDRESHKUMAR R RAJGURU

Appearance:

MR KH BAXI for Petitioner

MRS DT SHAH for Respondent

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/08/2001

ORAL JUDGEMENT

#. This special civil application is directed against the award of the Labour Court, Bhavnagar dated 15.5.1991 in Reference (LCB) No.216/88. The respondent-workman had raised the industrial dispute challenging his termination from service. The said dispute was referred by the

Assistant Labour Commissioner, Bhavnagar to the Labour Court, Bhavnagar.

#. It is the case of the respondent-workman that he was serving since one year and three months with the Board as daily wager and was discharging the duties as Helper. He was getting remuneration at the rate of Rs.490/- per month. According to the respondent-workman, the Board was not maintaining any seniority list and without issuing any notice, his services were terminated with effect from 16.9.1987. It is also the case of the respondent-workman that, his juniors are also continued, still his services were terminated. It is the say of the respondent-workman that he was illegally retrenched without following procedure of section 25-F(g)(h) of the Industrial Disputes Act. It was prayed that, termination order is required to be quashed and set aside and the respondent-workman is required to be reinstated in service with consequential benefits.

#. On behalf of the petitioner-employer, reply was filed at Exh.9. It was submitted before the Labour Court that the provisions of section 25-F are not attracted. It was also stated that the concerned workman was serving as casual worker and as per the requirement, he was called as and when his work was required. It was stated that since the workman was taken only for scarcity work, on completion of the scarcity work, his services were required to be terminated. On these and other grounds, such claim of the workman was resisted by the petitioner. Before the Labour Court, the concerned workman had led oral as well as documentary evidence. After considering the evidence of both the sides, the Labour Court came to the conclusion that the concerned workman had worked for more than 240 days continuously and that the petitioner has not complied with the provisions of section 25-F of the Industrial Disputes Act. The Labour Court also considered the fact that the employee had also written a demand letter, and therefore, it was found that the say of the employer was not believable to the effect that the respondent-workman has voluntarily left the service. The Labour Court has considered the fact that the petitioner has not produced any register or documentary evidence to substantiate their say. The Labour Court came to the conclusion that, even in the appointment order, there is no mention about the temporary nature of work or scarcity work. After considering the totality of the evidence, therefore, the Labour Court came to the conclusion that the order of termination was contrary to the provisions of law. Accordingly, the respondent-workman was reinstated in service with full back-wages. The

aforesaid award of the Labour Court is impugned in this petition.

#. It is not in dispute that, during the pendency of this petition, the concerned workman has already been taken in service and it is stated by Ms.Shah for the respondent workman that, he is taken back in service on 1.5.1991. At the time of confirmation of the interim relief, this Court has passed the following order on 29.3.1993 :

> "Heard the learned Advocates appearing for the parties as regards interim relief. In the facts of the case, petitioner is directed to make payment of further amount of Rs.4,000/- (Four thousand) to the respondent-workman latest by April 30, 1993. Balance of the amount of arrears may be retained by the petitioner on condition that in case the petitioner loses in the petition, petitioner shall pay the said amount or any other amount as may be directed by this Court with 15% (fifteen per cent) interest to the respondent-workman. In case the additional amount of Rs.4000/- (Four thousand) is not paid by April 30, 1993, interim relief granted herein, shall stand automatically vacated and the respondent-workman will be entitled to enforce the Award even by initiating action for contempt. It is clarified that there is no interim relief as regards direction given in the Award in respect of reinstatement of the respondent-workman."

#. Learned advocate Mr.Baxi for the petitioner argued that since the petitioner was appointed for scarcity work, it was not necessary for the Board to follow the provisions of section 25-F and it cannot be said that the respondent-workman was illegally retrenched.

#. However, it is required to be noted that the Labour Court has given very cogent reasons in the award. The Labour Court has came to the conclusion that the petitioner has not produced any register or any other documentary evidence, nor even the appointment order to substantiate their say that the petitioner was employed for scarcity work. This court cannot reappreciate the evidence on record. It is also required to be noted that the award of the Labour Court is based on oral as well as documentary evidence of the parties and the Labour Court has given cogent reasons in reaching to the conclusion that the order of termination is bad in law. It cannot

be, therefore, said that the Labour Court has committed any error of law or of jurisdiction in passing the impugned award. Apart from the said fact, the respondent-workman has already been reinstated in service since 1.5.1991. Ms.Shah also placed on record the copy of the order in Special Civil Application No.1454 of 1992 wherein in similar type of case, this court has upheld the award of the Labour Court.

#. In view of the aforesaid circumstances, therefore, I do not find any merits in this petition insofar as the award of reinstatement is concerned and as stated earlier, it cannot be said that the Labour Court has committed any error apparent on the face of the record and of law which is required to be corrected by this court in a petition substantially which is in the nature of the petition under Article 227 of the Constitution of India. I, therefore, do not find any substance in this petition and the same is required to be dismissed. However, in the facts and circumstances of the case, I reduce the back-wages to the extent of 25 % only. The respondent-workman will be entitled to the back-wages from the date of the termination till he was reinstated in service and for that intervening period, he will be entitled to the back-wages at the rate of 25% and not full back-wages. It is required to be noted that, in view of the order of the Division Bench of this Court, the aforesaid amount is required to be paid with 15% interest. The award of the Labour Court is modified to the aforesaid extent and while confirming the award of reinstatement, the back-wages are restricted only upto 25% as stated above. Whatever amount is required to be paid on the basis of this order, the same shall be paid on or before 31.10.2001. Rule is discharged subject to the aforesaid modification. No order as to costs.

(P.B.Majmudar,J)
(pathan)